

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

ROBERT L. MOORE v. JIM WORTHINGTON, ACTING WARDEN

**Appeal from the Criminal Court for Morgan County
No. 9193 E. Eugene Eblen, Judge**

No. E2007-01342-CCA-R3-HC - Filed June 3, 2008

The petitioner, Robert L. Moore, filed in the Morgan County Criminal Court a petition for a writ of habeas corpus. The habeas corpus court dismissed the petition, and, on appeal, the petitioner challenges the dismissal. In response, the State filed a motion requesting that this Court affirm the trial court's ruling pursuant to Rule 20, Rules of the Court of Criminal Appeals. Upon review of the record and the parties' briefs, we conclude that the petition was properly dismissed. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals.**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., AND D. KELLY THOMAS, JR., JJ., joined.

Walter B. Johnson, II (at trial and on appeal), and Joe H. Walker (on appeal), Harriman, Tennessee, for the appellee, Robert L. Moore.

Robert E. Cooper, Jr., Attorney General and Reporter; Renee W. Turner, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The record before us reflects that on January 27, 1983, the petitioner was convicted in the Davidson County Criminal court of second degree murder. He received a sentence of thirty years with release eligibility after service of thirty-five percent of the sentence. On July 17, 1990, the petitioner escaped from custody and committed an armed robbery. In his habeas corpus petition, the petitioner asserted that he pled guilty to armed robbery in exchange for a dismissal of the escape charge, and he received a sentence of eight years with a thirty-percent release eligibility, to be served consecutively to the sentence for second degree murder. The petitioner alleged in his petition that after he was convicted of the 1990 offenses, the Tennessee Department of Correction "added an additional twenty (20) percent to the petitioner's sentence." The petitioner contended that the imposition of an increase in the amount of time he must serve is illegal.

The State filed a motion to dismiss the habeas corpus petition, arguing that the petitioner failed to comply with the procedural requirements of habeas corpus law by failing to attach the judgments he is challenging, to state whether the instant habeas corpus petition is his first, or to verify his petition under oath. Moreover, the State contended that any issue regarding sentencing credits is not a proper habeas corpus issue and must instead be pursued through the Administrative Procedures Act. The habeas corpus court granted the motion to dismiss the habeas corpus petition, and the petitioner now appeals.

The determination of whether to grant habeas corpus relief is a question of law. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007). As such, we will review the trial court's findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, § 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). However, "[s]uch relief is available only when it appears from the face of the judgment or the record of the proceedings that a trial court was without jurisdiction to sentence a defendant or that a defendant's sentence of imprisonment or other restraint has expired." Wyatt, 24 S.W.3d at 322; see also Tenn. Code Ann. § 29-21-101 (2000). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. Taylor, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 995 S.W.2d at 83).

Initially, we note that "[w]ithout question, the procedural provisions of the habeas corpus statutes are mandatory and must be followed scrupulously." Archer v. State, 851 S.W.2d 157, 165 (Tenn. 1993). Specifically, Tennessee Code Annotated section 29-21-107 provides:

(a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal

process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

The State correctly notes that the petitioner failed to attach the contested judgments to the petition and failed to state that the instant petition is his first application for a writ of habeas corpus. See Cox v. State, 53 S.W.3d 287, 292 (Tenn. Crim. App. 2001), overruled on other grounds by Moody v. State, 160 S.W.3d 512, 515-16 (Tenn. 2005)). The transcript of the hearing on the petition reflects that the trial court allowed the petitioner an opportunity to submit the judgments before the trial court's ruling. However, the judgments were not included in the appellate record for our review. The petitioner carries the burden of ensuring that the record on appeal conveys a fair, accurate, and complete account of what has transpired with respect to those issues that are the bases of appeal. Tenn. R. App. P. 24(b); see also Thompson v. State, 958 S.W.2d 156, 172 (Tenn. Crim. App. 1997). Accordingly, the judgment of the trial court is affirmed.

NORMA McGEE OGLE, JUDGE